THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.15185 of 2006

Date 21-09-2006

Between:
Sri Gopal.

..... PETITIONER

AND

The Municipal Council, Tandur, Ranga Reddy District rep. by its Commissioner, Tandur.

.....RESPONDENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.15185 of 2005

ORDER:

Heard Sri Satyam Reddy, the learned counsel representing the writ petitioner and Sri Polisetti Radha Krishna, the learned standing counsel representing the respondent.

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondent in issuing the proceedings No.D/230/2006, dated 15-06-2006 in so far it relates to restricting New Vegetable Market Area for Tai Bazar for collection of market fee and reducing the period of licence from 12 months to 9 months as arbitrary, illegal and *mala fide* and consequently, permit the petitioner to collect Tai Bazar market fee for New Vegetable Market, Tandur, Ranga Reddy District as was being done earlier, and further direct the respondent to permit the petitioner to operate for 12 months and pass such other suitable orders.

Sri Satyam Reddy, the learned counsel for the petitioner, while making submissions had restricted his relief relating to restriction of the market area and would maintain that the writ petitioner is not particular of the other part of the relief i.e. reduction of the period from 12 months to 9 months. The learned counsel also had drawn the attention of this Court to the market notification and had pointed out that only old market and new market had been specified and now new conditions cannot be imposed and the area cannot be reduced.

Sri Polisetti Radha krishna, the learned standing counsel representing the respondent, had taken this Court through the

proceedings of the Commissioner of Municipal Council, Tandur dated 15-06-2006 and had drawn the attention of this Court to the note specifying “collected only new vegetable market not other than any arrears” and would maintain these factual controversies cannot be gone into by this Court.

Heard the counsel.

It is stated by the writ petitioner that the respondent has been auctioning the Tai Bazar (collection of market fee) from petty vegetable, fruits and other vendors in Tandur town and that the Tandur town is divided into two zones viz., Old Vegetable Market Area and New Vegetable Market Area. For the last more than six years, the petitioner and his father have been participating in the auction for Tai Bazar and have been successful bidders in the auctions and they were allotted either new or old vegetable market area and as also both the areas. It is stated that from the year 2002 onwards, the petitioner was given licence to collect Tai Bazar market fee for New Vegetable market area. For the current year also, market notification was issued by the respondent by notification No.D/230/2006, dated 23-03-2006 for the year commencing from 01-04-2006 to 31-03-2007. It is also stated that the petitioner participated in the auction and bid for an amount of Rs.1,31,000/- and he was the highest bidder and he had deposited Rs.25,000/- as EMD, and a further sum of Rs.30,000/- being 1/4th of total bid amount on 31-03-2006. It is further stated that though the petitioner paid Rs.55,250/-, he was not given the work order and was also not allowed to collect the market fee from 01-04-2006. It is also stated that upon repeated requests, the respondent had issued proceedings No.D/230/2006, dated 15-06-2006, giving the work order to the petitioner. However, the respondent had reduced

the period from 12 months to 9 months. Further, the respondent also attached a plan showing the proposed new vegetable market area and according to the said plan, the area was reduced by more than 75% of the area from the earlier new vegetable market area where he was collecting the market fee. Therefore, the petitioner approached the respondent and asked him as to how he is proposing to reduce more than 75% of the Tai Bazar area, and also requested that there was no particular map or identified areas in the notification except old vegetable market area and new vegetable market area. It is also stated that the petitioner further asked him as to why he was not given the entire 12 months contract period and that the respondent did not give any reply and told either he had to accept the reduced area or withdraw and in case, he withdraws the money he paid will be forfeited. In such circumstances, the writ petitioner had approached this Court.

In the counter affidavit filed by the respondent, it is stated that it is correct that the Tai Bazar area (Collection of market fee) is divided into two parts such as Old Vegetable Market Area and New Vegetable Market Area. It is also stated that the petitioner participated in the auctions of Tai Bazar since six years and collected market fee from petty business men who are doing business on road margins, vegetable markets and fruit markets. It is further stated that the petitioner was the successful bidder for New Vegetable Market, Tai Bazar area and collected market fee as per norms and paid the auction amount regularly. It is also stated that the respondent had issued notification for auction of Tai Bazar on 23-03-2006 under notification No.D/230/2006 for the year 01-04-2006 to 31-03-2007 and that the petitioner had participated in the auction and bidded for Rs.1,31,000/- and as the bid was highest,

the Tai Bazar for New Vegetable Market area was allotted to the petitioner. It is stated that the petitioner paid Rs.30,000/- as EMD and deposited only Rs.25,250/- as 1/4th to the auction amount and the petitioner had not followed the auction condition that he had to deposit 1/4th of auction amount within 3 days from the date of auction. It is further stated that the petitioner deposited Rs.21,000/- on 05-05-2006 under receipt No.050127017/271 and on repeated demands from the respondent, the petitioner deposited Rs.4,250/- on
15-06-2006 under receipt No.0550128024/52. The respondent denied that the petitioner had deposited Rs.55,250/- on
31-03-2006 stating that he has to prove the allegations by producing receipts of payments. It is false to state that even though the petitioner paid Rs.55,250/-, the work order was not issued and he was not allowed to collect the market fee from 01-04-2006 and he had been continuously collecting market fee as usual from 01-04-2006. It is stated that the petitioner had not paid 1/4th of the auction amount despite several reminders and instead the petitioner requested on 15-06-2006 to issue work order on payment of Rs.4,250/- and requested to permit him to pay the remaining amount in monthly instalments. Accordingly, orders were given on 15-06-2006 confirming his payment of Rs.25,250/- and EMD Rs.30,000/- totaling Rs.55,250 and a copy of the said order was served on the petitioner on the same day. It is stated that since the petitioner delayed in depositing 1/4th of the auction amount as stipulated in the notice, the work order was not issued, and denied and that the respondent reduced the period from 12 months to 9 months. It is further stated that the petitioner paid 1/4th of the

auction amount which is sufficient for 3 months and left out 9 months instalments specifying the monthly instalments @ Rs.8,417/- as mentioned in the work order dated 15-06-2006. It is also stated that the petitioner deposited Rs.55,250/- and 9 instalments @ Rs.8,417/-, which comes to Rs.75,753/- though the bidded amount is Rs.1,31,000/- and that the petitioner was at fault in depositing 1/4th of the auction amount, and even the petitioner had collected the market fee of Tai Bazar, New Vegetable Market from 01-04-2006 without any orders. It was denied that the respondent had reduced New Vegetable Market Area for Tai Bazar more than 75% and moreover, the Tai Bazar area for new vegetable market was decided more than 6 years back and the same is continuing and that the petitioner was acting as Tai Bazar Contractor since 2000 onwards. It is also stated in the counter affidavit that to avoid differences among the Tai Bazar Contractors, a map was shown along with the work order. It is further stated that the respondent had notified the areas of Tai Bazar but also explained auction conditions before the auction to the petitioner and other persons, who participated in the auction. It is further denied that the petitioner had approached the respondent for reducing the area. It is false to state that the petitioner had asked the respondent as to why the contract period was reduced from 12 months to 9 months and that the respondent failed to give reply to his representation. It is stated that the petitioner is making false allegations only to gain orders and to continue as Tai Bazar Contractor without payment of auction amount as stipulated in the auction notice. The allegation that the respondent replied that to accept the reduced area or to withdraw and in case of withdrawal, the money paid will be forfeited, is denied. It is stated that the

petitioner has to pay the instalments as stipulated and has to collect the market fee as per the auction notice.

In para 4 of the counter affidavit, it is stated that the respondent while making auction has shown the map to the participants of the auction and explained the area of new vegetable market which contains Baswanna Katta to Bhadreshwar Chowk, Marwadi Bazaar Road and Seetharampet Road and the said area is more than 50% area of Tandur Bazars. It is further stated that the petitioner after confirming the areas only participated in the auction and secured Tai Bazar with Rs.1,31,000/- from 01-04-2006 to 31-03-2007. It is false to state that the petitioner and his father were successful bidders for the last six years on divided area of new vegetable market and on enquiry, it was told that the petitioner's father died 5 years back. It is false to state that the area of new vegetable market Tai Bazar is reduced after auction and that the period of 12 months is reduced to 9 months. It is stated that the respondent had only indicated monthly instalments as 9 but not reduced the time of contract. It is stated that the petitioner had not deposited 1/4th auction amount as stipulated in the auction notice and the work order was given on 15-06-2006 immediately after payment made by the petitioner.

The learned counsel representing the petitioner had drawn the attention of this Court to the current year market notification dated 23-03-2006. However, as already stated, in relation to the reduction of period, the petitioner is not particular, but strong reliance was placed on plan and would submit that the respondent cannot restrict area or reduce the area since the current year market notification issued in this regard being clear and categorical. However, the learned standing counsel had placed strong reliance

on the proceedings of the Commissioner of Municipal Council, Tandur dated 15-06-2006 and had referred to the note “collected only new vegetable market and not other than any areas. It is no doubt true that when the local body had proceeded with auction specifying particular areas, except the stand taken in the counter affidavit that all these aspects had been explained, no other acceptable record is placed before this Court except, most probably, the note which had been recorded in the proceedings of the Commissioner of Municipal Council, Tandur dated 15-06-2006. Inasmuch as a portion of the relief relating to the reduction of the period from 12 months to 9 months is being not pressed by the counsel representing the petitioner, this Court need not express any further opinion relating to the same. The impugned order relating to the reduction of the area and relating to the collection of the market fee is hereby set aside and the matter is remitted to the respondent to reconsider the aspect in the light of the respective stands taken by the parties and pass appropriate orders in relation thereto within a period of one week from the date of receipt of a copy of this order.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

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21-09-2006

Note:CC in two days
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